



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

40 CFR Part 52

[EPA-R06-OAR-2005-NM-0006; FRL- 9654-2]

Approval and Promulgation of Implementation Plans;

New Mexico; Construction Permit Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final action to approve revisions which repeal and replace existing rules, and revisions to the applicable State Implementation Plan (SIP) for New Mexico submitted by the State of New Mexico on April 11, 2002, and April 25, 2005, which relate to construction permit fee requirement regulations. The repeal and replace and SIP revisions included in this action would address section 110(a)(2) Clean Air Act (the Act or CAA) requirements related to fees for reviewing and acting on specific air quality construction permit applications received by the New Mexico Environment Department (NMED or Department) and for implementing and enforcing the terms and conditions of the construction permit, excluding any court costs or other costs associated with an enforcement action. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations and are consistent with EPA policies. This action is being taken under section 110 of the Act.

DATES: This direct final rule is effective on **[Insert date 60 days from date of publication in the Federal Register]** without further notice, unless EPA receives relevant adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2005-NM-0006, by one of the following methods:

- (1) www.regulations.gov : Follow the on-line instructions for submitting comments.
 - (2) E-mail: Ms. Ashley Mohr at mohr.ashley@epa.gov.
 - (3) Fax: Ms. Ashley Mohr, Air Permits Section (6PD-R), at fax number 214-665-6762.
 - (4) Mail: Ms. Ashley Mohr, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
 - (5) Hand or Courier Delivery: Ms. Ashley Mohr, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- Such deliveries are accepted only between the hours of 8:30 AM and 4:30 PM weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2005-NM-0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is

CBI or otherwise protected from disclosure. The <http://www.regulations.gov> website is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 AM and 4:30 PM weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for

making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's direct final action, please contact Ms. Ashley Mohr (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, Texas 75202-2733, telephone (214) 665-7289; fax number (214) 665-6762; email address mohr.ashley@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document the following terms have the meanings described below:

- “we”, “us” and “our” refer to EPA.
- “Act” and “CAA” mean the Clean Air Act.
- “40 CFR” means Title 40 of the Code of Federal Regulations – Protection of the Environment.
- “SIP” means the State Implementation Plan established under section 110 of the Act.
- “NSR” means new source review.

- “TSD” means the Technical Support Document for this action.
- “NAAQS” means any national ambient air quality standard established under 40 CFR part 50.

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I. What Action is EPA Taking?

We are taking direct final action to approve revisions to the applicable State Implementation Plan (SIP) for New Mexico submitted by the State of New Mexico on April 11, 2002, and April 25, 2005, which relate to construction permit fee requirement regulations. The April 11, 2002, SIP submittal repealed the existing construction permit fee regulations and adopted replacement construction permit fees (hereafter referred to as “repeal and replace”), codified in 20.2.75 of the New Mexico Administrative Code (NMAC). The April 25, 2005, SIP

submittal amended four sections of the repeal and replace: 20.2.75.5 NMAC, 20.2.75.7 NMAC, 20.2.75.10 NMAC, and 20.2.75.11 NMAC.

We provide the reasoning comprising our evaluation in general terms in this rulemaking but provide a more detailed evaluation and analysis in the Technical Support Document (TSD) that has been prepared for this rulemaking. The repeal and replace submitted on April 11, 2002, has been determined to be significantly different from the existing version of 20.2.75 NMAC, Construction Permit Fees, which was approved into the New Mexico SIP by EPA on September 26, 1997 (62 FR 50518). Therefore, a direct comparison to the approved New Mexico SIP is impractical, and the technical review of the repeal and replace will be evaluated for approval in this action and used as the baseline SIP for evaluation of the April 25, 2005, revisions.

Our technical analysis of the April 11, 2002, repeal and replace and the April 25, 2005, SIP rule revisions has found that the repeal and replace as a baseline rule, and the subsequent revisions to this rule are consistent with applicable provisions of section 110(a)(2) of the CAA. Therefore, EPA is taking direct final action to approve the fees SIP rules submitted on April 11, 2002, and April 25, 2005.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. As explained in our technical support document (TSD), we are finding this action noncontroversial because the construction permit fees program is an established permit fees program that New Mexico developed with input from members of the regulated community and public interest groups via a public participation process that was initiated simultaneous to initial rule review and development. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if

relevant adverse comments are received. This rule will be effective on **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication in the Federal Register]** without further notice unless we receive relevant adverse comment by **[FEDERAL REGISTER OFFICE: insert date 30 days from date of publication in the Federal Register]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What did New Mexico Submit?

A. April 11, 2002 Repeal and Replace SIP Revision Submittal

The Governor of New Mexico submitted on April 11, 2002, a repeal and replacement of the existing version of 20.2.75 NMAC, Construction Permit Fees, which was approved into the New Mexico SIP by EPA on September 26, 1997. This submittal includes the following changes:

- *Repeal and replace of the following sections:* 20.2.75.1 NMAC, Issuing Agency; 20.2.75.2 NMAC, Scope; 20.2.75.3 NMAC, Statutory Authority; 20.2.75.4 NMAC, Duration; 20.2.75.5 NMAC, Effective Date; 20.2.75.6 NMAC, Objective; 20.2.75.7 NMAC, Definitions; 20.2.75.8 NMAC, Amendment and Supersession of Prior Regulations; 20.2.75.9 NMAC, Documents; 20.2.75.10

NMAC, Filing Fee; 20.2.75.11 NMAC, Permit Fee; 20.2.75.12 NMAC, Payment of Fees; and 20.2.75.13 NMAC, Periodic Review.

B. April 25, 2005 SIP Revision Submittal

The Governor of New Mexico submitted on April 25, 2005, a revision to 20.2.75 NMAC, Construction Permit Fees. This submittal includes the following changes:

- *Revisions to the following sections:* 20.2.75.5 NMAC, Effective Date; 20.2.75.7 NMAC, Definitions; 20.2.75.10 NMAC, Filing Fee; and 20.2.75.11 NMAC, Permit Fee.

Table 1 summarizes the changes that are in the repeal and replace submitted April 11, 2002, and the additional SIP revisions submitted April 25, 2005. A summary of EPA's evaluation of each section and the basis for this action is discussed in section III of this preamble. The Technical Support Document (TSD) includes a detailed evaluation of the referenced SIP submittals.

Table 1. Summary of each SIP submittal that is affected by this action.

Section	Title	Submittal Dates	Description of Change	Final Action
20.2.75 NMAC – Construction Permit Fees				
Issuing Agency				
20.2.75.1 NMAC	Issuing Agency	4/11/2002	Repeal and replace: Information about the issuing agency	Approval
Scope				
20.2.75.2 NMAC	Scope	4/11/2002	Repeal and replace: Scope of rule applicability and annual fee payment requirements ¹	Approval

¹ The scope provisions submitted on April 11, 2002 as part of the repeal and replace references Operating Permits (20.2.70 NMAC) and Operating Permit Emission Fees (20.2.71 NMAC) related to the Title V program. The Title V program is subject to statutory and regulatory evaluation beyond the statutory scope of this rulemaking. CAA Section 110(a)(2) falls under Title I of the CAA. Any evaluation of the Title V program and related fees must be done pursuant to CAA section 502 through 507 and 40 CFR part 70. Therefore, we are approving the reference to Operating Permits and Operating Permit Emission Fees as part of the permit fee schedule for the purpose of compliance with the fee related requirements of section 110(a)(2), but we are not evaluating or approving into the SIP the underlying and related regulations found in 20.2.70 NMAC and 20.2.71 NMAC through this rulemaking.

Statutory Authority				
20.2.75.3 NMAC	Statutory Authority	4/11/2002	Repeal and replace: Fees provisions adopted pursuant to state statutory authority	Approval
Duration				
20.2.75.4 NMAC	Duration	4/11/2002	Repeal and replace: Rules to be of permanent duration	Approval
Effective Date				
20.2.75.5 NMAC	Effective Date	4/11/2002	Repeal and replace: Rules to be effective March 2, 2001	Approval
		4/25/2005	Section revised to include the effective date as March 2, 2001 except where a later date is cited at the end of a specific section	Approval
Objective				
20.2.75.6 NMAC	Objective	4/11/2002	Repeal and replace: Establishes objective for fees rules	Approval
Definitions				

20.2.75.7 NMAC	Definitions	4/11/2002	Repeal and Replace: Provides definitions for the following as used in the fees rules: “Air toxics review”, ² “Applicable regulations”, ³ “Fee unit”, ⁴ “Fugitive Emissions Fee Unit”. “Revision”, ⁵ “Small business”, ⁶ “Technical review of an existing permit”	Approval
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² “Air toxics review” under the repeal and replace submitted April 11, 2002 references Air Toxics Review (20.2.72.400 NMAC- 20.2.72.499 NMAC), which is a permitting program and regulation separate from the fee rules governed by 20.2.75 NMAC. The State Air Toxics program is subject to statutory and regulatory evaluation beyond the statutory scope of this rulemaking. This action is limited to determining whether the New Mexico fee SIP submittals meet the fee related requirements of section 110(a)(2). Therefore, we are approving the reference to Air Toxics Review as part of the permit fee schedule for the purpose of compliance with the fee related requirements of section 110(a)(2), but we are not evaluating or approving into the SIP the underlying and related regulations for Air Toxics Review through this rulemaking.

³ “Applicable regulations” under the repeal and replace submitted April 11, 2002 references Operating Permits (20.2.70 NMAC), Operating Permit Emissions Fees (20.2.71 NMAC), New Source Performance Standards (NSPS) (20.2.77 NMAC), Emission Standards for Hazardous Air Pollutants (NESHAP) (20.2.78 NMAC), and Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants (MACT) (20.2.82 NMAC) (hereafter collectively referred to as Parts 70, 71, 77, 78, and 82), which are regulations separate from the fee rules governed by 20.2.75 NMAC. The regulations included in Parts 70, 71, 77, 78, and 82 are subject to statutory and regulatory evaluation beyond the statutory scope of this rulemaking. This action is limited to determining whether the New Mexico fee SIP submittals meet the fee related requirements of section 110(a)(2). Therefore, we are approving the reference to these regulations as part of the permit fee schedule for the purpose of compliance with the fee related requirements of section 110(a)(2), but we are not evaluating or approving into the SIP the underlying and related regulations for Parts 70, 71, 77, 78, and 82 through this rulemaking.

⁴ “Fee unit” under the repeal and replace submitted April 11, 2002 references Exemptions (20.2.72.202 NMAC), which are a permitting program and regulations separate from the fee rules governed by 20.2.75 NMAC. In this rulemaking, we are approving only the reference to Exemptions as part of the fee schedule required by the applicable requirements of section 110(a)(2). However, though we are approving these fee rules and the related references for the purpose of compliance with the fee related requirements of section 110(a)(2), we are not evaluating or approving into the SIP the underlying permitting program or regulations for Exemptions through this rulemaking. New Mexico has submitted these Exemptions in a separate SIP submittal, and we will act upon that submittal in a separate future rulemaking.

⁵ “Revision” under the repeal and replace submitted April 11, 2002 references Administrative Revisions as used in 20.2.72 NMAC, which are regulations separate from the fee rules governed by 20.2.75 NMAC. In this rulemaking, we are approving only the reference to Administrative Revisions as part of the fee schedule required by the applicable requirements of section 110(a)(2). However, though we are approving these fee rules and the related references for the purpose of compliance with the fee related requirements of section 110(a)(2), we are not evaluating or approving into the SIP the underlying regulations for Administrative Revisions through this rulemaking. New Mexico has submitted the Administrative Revisions provisions in a separate SIP submittal, and we will act upon that submittal in a separate future rulemaking.

⁶ “Small business” under the repeal and replace submitted April 11, 2002 references 20.2.70 NMAC related to the Title V program. The Title V program is subject to statutory and regulatory evaluation beyond the statutory scope of this rulemaking. CAA Section 110(a)(2) falls under Title I of the CAA. Any evaluation of the Title V program must be done pursuant to CAA section 502 through 507 and 40 CFR part 70. Therefore, we are approving the reference to Operating Permits as part of the permit fee schedule for the purpose of compliance with the fee related requirements of section 110(a)(2), but we are not evaluating or approving into the SIP the underlying regulation found in 20.2.70 NMAC through this rulemaking.

		4/25/2005	Section revised to include the correction of a typographical error in the definition of “Fee unit”	Approval
Amendment and Supersession of Prior Regulations				
20.2.75.8 NMAC	Amendment and Supersession of Prior Regulations	4/11/2002	Repeal and replace: Amendment and supersession of AQCR 700 with Part 75	Approval
Documents				
20.2.75.9 NMAC	Documents	4/11/2002	Repeal and replace: Documents cited may be viewed at physical location	Approval
Filing Fee				
20.2.75.10 NMAC	Filing Fee	4/11/2002	Repeal and replace: Filing fees established for construction permit applications ⁷	Approval
		4/25/2005	Section revised to include filing fee requirements for filing of a notice of intent	Approval
Permit Fee				
20.2.75.11 NMAC	Permit Fee	4/11/2002	Repeal and replace: Complexity point-based permit fee schedule and annual fees established for construction permit applicants ^{8,9,10}	Approval

⁷ The filing fee provisions submitted on April 11, 2002 as part of the repeal and replace includes filing fee requirements in 20.2.75.10(B) NMAC for permit applications filed under the Accelerated Review permit processing program (20.2.72.221 NMAC). New Mexico has withdrawn the provisions contained in 20.2.75.10(B) NMAC from the April 11, 2002 submittal since the underlying Accelerated Review permit processing program is not part of the New Mexico SIP.

⁸ The complexity point-based permit fee schedule submitted on April 11, 2002 as part of the repeal and replace includes permit fee requirements in 20.2.75.11(D) NMAC for permit applications filed under the Accelerated Review permit processing program (20.2.72.221 NMAC). New Mexico has withdrawn the provisions contained in 20.2.75.11(D) NMAC from the April 11, 2002 submittal since the underlying Accelerated Review permit processing program is not part of the New Mexico SIP.

⁹ The complexity point-based permit fee schedule submitted on April 11, 2002 as part of the repeal and replace includes allotment of points to Air Toxics Review (20.2.72.400 NMAC - 20.7.72.499 NMAC), NSPS, and NESHAP/MACT programs for the purpose of calculating a permit fee. Air Toxics Review, NSPS, and NESHAP/MACT programs are subject to statutory and regulatory evaluation beyond the statutory scope of this rulemaking. This action is limited to determining whether the New Mexico fee SIP submittals meet the fee related requirements of section 110(a)(2). Therefore, we are approving the references to Air Toxics Review, NSPS, and NESHAP/MACT programs as part of the permit fee schedule for the purpose of compliance with the fee related requirements of section 110(a)(2), but we are not evaluating or approving into the SIP the underlying and related regulations for Air Toxics Review, NSPS, and NESHAP/MACT programs through this rulemaking.

¹⁰ The complexity point-based permit fee schedule submitted on April 11, 2002 as part of the repeal and replace includes allotment of points to “applicable regulations” as represented by a generic catch-all provision denoted 20.2.X NMAC. (20.2.X NMAC includes those regulations that are applicable to sources as defined in 20.2.75.7(B)). 20.2.X NMAC includes regulations that are separate from the fee rules governed by 20.2.75 NMAC. The regulations, sources, and programs represented by 20.2.X NMAC and as defined by 20.2.75.7(B) may be subject to statutory and regulatory evaluation beyond the statutory scope of this rulemaking. This action is limited to determining whether the New Mexico fee SIP submittals meet the fee related requirements of section 110(a)(2).

		4/25/2005	Section revised to include complexity points for portable source relocation; increase annual fee amount; and establish requirement to update fee amounts annually based on the Consumer Price Index	Approval
Payment of Fees				
20.2.75.12 NMAC	Payment of Fees	4/11/2002	Repeal and replace: Construction permit fee payment requirements for filing fees, permits fees, and annual fees	Approval
Periodic Review				
20.2.75.13 NMAC	Periodic Review	4/11/2002	Repeal and replace: Construction permit fees and construction permit program costs will be reviewed annually	Approval

III. EPA's Evaluation

A. *What are the Requirements for EPA's Review of a Fees SIP Submittal?*

The New Mexico EIB adopted and the Governor of New Mexico submitted the April 11, 2002, repeal and replace and the April 15, 2005, SIP revisions pursuant to the applicable provisions of section 110(a)(2) of the CAA related to fees. These federal requirements include permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit. In addition to the applicable fee related requirements of section 110(a)(2), EPA's evaluation must consider section 110(l) of the CAA. Section 110(l) of the CAA states that EPA shall not approve a revision of the SIP if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

B. *Do the Submitted Repeal and Replace Revisions and Subsequent SIP Revisions Meet the CAA Requirements?*

Therefore, we are approving the reference to 20.2.X NMAC as part of the permit fee schedule for the purpose of compliance with the fee related requirements of section 110(a)(2), but we are not evaluating or approving into the SIP the underlying and related regulations including in 20.2.X NMAC through this rulemaking.

Based on EPA's evaluation of the April 11, 2002, and April 25, 2005, SIP submittals, we find these submitted rules and revisions meet the applicable fee related requirements of section 110(a)(2) of the CAA. These rules and revisions are summarized in Table 1 of this rulemaking, and are analyzed with more detail in the TSD. The rules and revisions contained within the Governor of New Mexico's submittals demonstrate compliance with section 110(a)(2) of the Act. For example, the NMED assesses fees when an owner or operator applies for a notice of intent, a permit to construct or modify a source, or a revision to a construction permit. Additionally, annual fees are assessed for sources that have been issued a permit under 20.2.72 NMAC, Construction Permits. These fees are used to cover the costs of NMED's construction permit program, including permit review, issuance, and implementation costs. New Mexico indicated in the April 11, 2002, and April 25, 2005, SIP submittals that the repeal and replace and subsequent revisions to the construction permit fee requirement regulation are necessary for the Department to collect sufficient fees to cover the costs of the construction permit program. The fee schedule adopted by New Mexico and the fee rules and revisions further described and evaluated in this action and TSD, evince a basis for EPA's approval that the submittals meet the requirements of 110(a)(2).

The fee assessment provisions in 20.2.75 NMAC and submitted to EPA are a portion of the regulatory scheme regulating NMED's construction permitting program, and provide for permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit under the permitting program. EPA has previously reviewed the New Mexico EIB regulations for the Nonattainment New Source Review Program, Prevention of Significant Deterioration Permitting, and Minor NSR program, and has approved these programs as being consistent with the federal requirements. EPA approved revisions to the Nonattainment New Source Review

Program, the Prevention of Significant Deterioration Program, and the Minor NSR program on September 5, 2007 (72 FR 50879), July 30, 2011 (76 FR 43149), September 26, 1997 (62 FR 50518) respectively. Based on our evaluation of these fee assessment rules and revisions both described in this notice and TSD, EPA finds they meet the fee related requirements of section 110(a)(2) to in part cover costs for these previously approved programs, and thus approves the rules and revisions as explained in Table 1.

Our evaluation of the April 11, 2002, and April 25, 2005, SIP submittals also demonstrates compliance with section 110(l) of the CAA, and further provides basis for approval of these rules and revisions. Pursuant to section 110(l) of the CAA, the repeal and replace included in the April 11, 2002, SIP submittal provides for a broader breadth, application, and stringency of requirements related to fees than the construction permit fees contained in the previously approved SIP, which was approved by EPA on September 26, 1997. Based on EPA's evaluation of these fee assessment provisions submitted, EPA finds the submitted repeal and replace of, and subsequent revisions to, 20.2.75 NMAC establishing fee requirements for permits is consistent section 110(a)(2) of the CAA.

IV. Final Action

EPA is taking direct final action to approve revisions to the New Mexico SIP submitted on April 11, 2002, and April 25, 2005. Specifically, EPA is approving the repeal and replacement of 20.2.75 NMAC submitted on April 11, 2002, and subsequent revisions to sections 20.2.75.5 NMAC, 20.2.75.7 NMAC, 20.2.75.10 NMAC, and 20.2.75.11 NMAC, submitted on April 25, 2005, establishing a revised permit fee schedule to cover the reasonable costs of the New Mexico construction permit program.

EPA is not acting on other severable portions of the April 11, 2002, and April 25, 2005, SIP submittals.¹¹ Specifically, EPA is not taking action on the revisions submitted on April 11, 2002, to 20.2.72 NMAC, Construction Permits; 20.2.73 NMAC, Notice of Intent and Emissions Inventory Requirements; and 20.2.79 NMAC, Permits – Nonattainment Areas. EPA is also not taking action on the revisions submitted on April 25, 2005, to 20.2.66 NMAC, Cotton Gins; 20.2.72 NMAC, Construction Permits; and 20.2.73 NMAC, Notice of Intent and Emissions Inventory Requirements. These revisions have been or will be addressed by EPA in separate SIP revision reviews and rule actions.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

¹¹ By severable, we mean that the portions of the SIP revisions that address fees can be implemented independently of the remaining portions of the submittal, without affecting the stringency of the submitted rules. In addition, the remaining portions of the submittal are not necessary for approval of the provisions addressing fees.

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 16, 2012

Al Armendariz,

Regional Administrator, EPA Region 6.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG – New Mexico

2. The first table in § 52.1620(c) entitled “EPA Approved New Mexico Regulations” is amended by revising the entry for Part 75 to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA Approved New Mexico Regulations

State citation	Title/Subject	State approval/ effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20 – Environment Protection Chapter 2 – Air Quality				
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Part 75	Construction Permit Fees	12/1/2003	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	NOT in SIP: subsection (B) of 20.2.75.10 and subsection (D) of 20.2.75.11. References to 20.2.70, 20.2.71, 20.2.72.400- 20.2.72.499, 20.2.77, 20.2.78, 20.2.82, and 20.2.X are approved for Part 75 only; underlying and related regulations for referred Parts NOT in SIP.
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